

1 MICHAEL A. JACOBS (CA SBN 111664)  
MJacobs@mofo.com  
2 ARTURO J. GONZÁLEZ (CA SBN 121490)  
AGonzalez@mofo.com  
3 ERIC A. TATE (CA SBN 178719)  
ETate@mofo.com  
4 MORRISON & FOERSTER LLP  
425 Market Street  
5 San Francisco, California 94105-2482  
Telephone: 415.268.7000  
6 Facsimile: 415.268.7522  
7 Attorneys for Defendants  
UBER TECHNOLOGIES, INC.,  
8 OTTOMOTTO LLC, and OTTO TRUCKING LLC

9 KAREN L. DUNN (*Pro Hac Vice*)  
kdunn@bsflp.com  
10 HAMISH P.M. HUME (*Pro Hac Vice*)  
hhume@bsflp.com  
11 BOIES SCHILLER FLEXNER LLP  
1401 New York Avenue, N.W.  
12 Washington DC 20005  
Telephone: 202.237.2727  
13 Facsimile: 202.237.6131

14 Attorneys for Defendants  
UBER TECHNOLOGIES, INC.  
15 and OTTOMOTTO LLC

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION

19 WAYMO LLC,  
20 Plaintiff,  
21 v.  
22 UBER TECHNOLOGIES, INC.,  
23 OTTOMOTTO LLC; OTTO TRUCKING LLC,  
24 Defendants.

Case No. 3:17-cv-00939-WHA

**DECLARATION OF RHIAN  
MORGAN IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

Date: May 3, 2017  
Time: 7:30 a.m.  
Ctrm: 8  
Judge: Honorable William Alsup

Trial Date: October 2, 2017

1 I, Rhian Morgan, declare as follows:

2 1. I have been an employee of Uber Technologies, Inc. (“Uber”) since August 24,  
3 2016, and prior to that I served as HR Lead at Ottomotto LLC (“Otto”). I make this declaration in  
4 support of Defendants’ Opposition to Plaintiff’s Motion for a Preliminary Injunction and have  
5 personal knowledge of the facts stated herein.

6 2. Prior to Otto, I had worked in human resources, recruitment, and staffing for  
7 almost six years. From May 2015 to January 2016, I worked as a Mobile Delivery Specialist at  
8 consultative technology staffing firm K2 Partnering Solutions. From May 2011 to May 2015, I  
9 worked in HR and as a recruiter at ID Business Solutions.

10 3. I starting working at Otto in approximately January 2016. At that time, I was  
11 involved in matters related to payroll, benefits, and office space set up.

12 4. I was the first employee at Otto. In my role as HR Lead, I have been responsible  
13 for all aspects of human resources at Otto, including recruitment, hiring, on-boarding of new  
14 employees, and implementing Otto’s related company policies. As part of my responsibilities, I  
15 also maintain employee personnel files, including the forms that document recruiting and hiring  
16 processes at Otto.

17 5. Since the formation of the company, Otto has taken measures against an  
18 employee’s retention of confidential information from a former employer starting from the offer  
19 process. The offer letter provided by Otto explicitly prohibits an offeree from bringing any  
20 confidential information from his or her former employer:

21 Company does not want you to, and hereby directs that you must  
22 not, bring to Company, or otherwise use in connection with  
23 performing any services on behalf of the Company, any intellectual  
property rights or other proprietary or confidential material or  
information of any former employer or other third party.

24 6. The offer letter requires an offeree to represent and warrant that he or she will not  
25 bring any confidential information from his or her former employer to Otto:

26 Accordingly, by signing this Offer Letter you represent and warrant  
27 that you will not bring to Company, or otherwise use in connection  
28 with performing any services on behalf of the Company, any  
intellectual property rights or other proprietary or confidential  
material or information of any former employer or other party.

1           7.       Attached as Exhibit A is a true and correct copy of an exemplar offer letter from  
2 Otto.

3           8.       I am aware that, since the formation of the company in January 2016, Otto has  
4 made slight modifications to its offer letter. I have reviewed each version of the offer letter  
5 template, and each version contains the same language quoted above.

6           9.       During the onboarding process for Otto, it was my normal business practice to  
7 provide an oral overview of the contents of the offer letter—including the prohibition against and  
8 representation and warranty regarding former employer information—with each new hire.

9           10.      In the same period as signing the offer letter, a new Otto employee was also  
10 required to complete and execute an Employee Invention Assignment and Confidentiality  
11 Agreement (“EIACA”). Each Otto employee made the following representations in his or her  
12 EIACA:

13                   I represent that my performance of all the terms of this Agreement  
14 and my duties as an employee of the Company will not breach any  
15 invention assignment, proprietary information, confidentiality, non-  
16 competition, or other agreement with any former employer or other  
17 party. I represent that I will not bring with me to the Company or  
18 use in the performance of my duties for the Company any  
19 documents or materials or intangibles of my own or of a former  
20 employer or third party that are not generally available for use by  
21 the public or have not been legally transferred to the Company.

18           11.      Attached as Exhibit B is a true and correct copy of an exemplar EIACA from Otto.

19           12.      During the onboarding process for Otto, it was my normal business practice to  
20 provide an oral overview of the contents of the EIACA—including the representations that the  
21 employee has not breached any of his or her agreements with any former employer—with each  
22 new hire.

23           13.      In approximately April 2016, Otto undertook the additional measure against  
24 breach of former employment agreements by issuing an employee attestation where each  
25 employee certified and declaration that he or she had not committed any of the following acts:

- 26                   • fraud in connection with me becoming employed by  
27 Ottomotto;
- 28                   • willful, intentional or deliberate conduct that constitutes or  
directly leads or contributes to the infringement (direct or

indirect) or misappropriation of any patents, copyrights, trademarks or trade secrets of my prior employer including, without limitation, taking removing and/or copying software, product plans, or invention disclosures, in electronic or tangible form that are owned by my prior employer;

- willful and/or intentional breach by me of any fiduciary duty or duty of loyalty to my prior employer; and/or
- willful and/or intentional breach by me of any lawful and enforceable non-solicitation, non-competition, confidentiality or other similarly restrictive covenant or agreement between me and my prior employer.

14. Attached as Exhibit C is a true and correct copy of an exemplar attestation.

15. I supervised the distribution and return of these executed attestations in approximately April 2016. Each employee who worked at Otto at that time executed an attestation.

16. Subsequent new hires executed the attestation during the onboarding process for Otto. It was my normal business practice to provide an oral overview of the contents of the attestation—including the representations that the employee has not breached any of his or her agreements with any former employer—with each new hire.

17. Otto also provided instruction to employees regarding how to respond to outreach by candidates from their former employers to whom they had non-solicitation obligations. I am aware that certain Otto employees who had management roles with their previous employers, including Anthony Levandowski, received such instruction. If such a communication was received, Otto employees were to indicate they are screening themselves from the recruiting process with that candidate and that the candidate can apply for employment at Otto by contacting me.

18. As part of that screening from the recruiting process, it was Otto's company policy that individuals could not conduct interviews of any candidate from their former employers.

19. In my role as HR Lead, I oversaw the recruiting process and managed other recruiters employed at Otto. It was my normal business practice to repeatedly instruct all recruiters at Otto that they were prohibited from reaching out to any current Google employee.

1           20. Another part of my role as HR Lead was to request referrals of potential  
2 candidates from current Otto employees. It was my normal business practice to state explicitly in  
3 those requests that Otto employees who had left Google within the past year could not provide  
4 any names of candidates who are active Google employees.

5           21. I am aware that Otto was acquired by Uber Technologies, Inc. ("Uber") in August  
6 2016.

7           22. Effective August 24, 2016, all Otto employees became Uber employees.

8           23. After the acquisition, the Otto onboarding process transitioned from using the  
9 aforementioned documentation from Otto—the offer letter, EIACA, and employee attestation—to  
10 using the standard onboarding documentation used by Uber. I understand that the standard  
11 onboarding documentation used by Uber reflects the same prohibitions against retention of  
12 confidential information from any former employer and solicitation of employees from a former  
13 employer.

14           24. I have reviewed the employee personnel files that I maintain in my role as HR  
15 Lead, and those records indicate that Radu Raduta joined Otto on July 29, 2016 and left on  
16 November 4, 2016.

17           25. The work computer Radu Raduta used while employed at Otto was preserved after  
18 he left. That computer was submitted to a third party for collection and analysis related to this  
19 litigation.

20           26. I have never worked for Google. I have never used any Google or Waymo  
21 information during my tenure at Otto or Uber and before this lawsuit, I had never heard of the  
22 14,000 files allegedly downloaded by Anthony Levandowski. I have never seen any evidence of  
23 any use of Google or Waymo information during my tenure at Otto and Uber.

24  
25           I declare under penalty of perjury that the foregoing is true and correct. Executed this 7  
26 day of April, 2017, at San Francisco, California.

27  
28   
Rhian Morgan